

TO: Honorable Alicemarie Stotler, Chair, and Members of the Standing Committee on Rules of Practice and Procedure

FROM: Honorable James K. Logan, Chair
Advisory Committee on Appellate Rules

DATE: June 20, 1996

INTRODUCTION

The Advisory Committee on Appellate Rules met on April 15, 1996, in San Francisco, California. The Committee also held a telephone conference on May 1, 1996. The Advisory Committee considered the public comments on the proposed amendments to the Appellate Rules that were published in September, 1995. After making several changes to the proposed amendments, the Advisory Committee approved them for presentation to the Standing Committee for final approval. The Advisory Committee requests, however, that these rules not be forwarded to the Judicial Conference for its fall meeting. The Advisory Committee would like to delay these changes so that they become effective at the same time as the restyled rules currently published for comment.

The Advisory Committee also approved one additional rule change and amendment of a form for presentation to the Standing Committee with a request for publication. The Advisory Committee requests that these proposals be published as soon as possible so that these changes can also proceed on the same schedule as the restyled rules.

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I. ACTION ITEMS

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B. Proposed Amendments to Federal Rules of Appellate Procedure 5 and 5.1 and to Form 4 submitted for approval for publication.

1. Synopsis of Proposed Amendments

(a) Existing Rules 5 and 5.1 are combined in new Rule 5; Rule 5.1 was largely repetitive of Rule 5. New Rule 5 is intended to govern all discretionary appeals from district court orders, judgments, or decrees. Most of the changes are intended only to broaden the language so that the Rule applies to all discretionary appeals. The time for filing provision, for example, states only that the petition must be filed within the time provided by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal. A uniform time — 7 days — is established for filing an answer in opposition or a cross-petition.

(b) Form 4 is substantially revised to obtain more detailed information needed to assess a party's eligibility to proceed in forma pauperis.